

Application No: 09/926,286
Filed January 15, 2002
Atty. Docket: 2965-0159

REMARKS

Rejections under 35 U.S.C. §102(b) and 35 U.S.C. §103(a)

On page 2, the Office rejects claims 1-4 alternatively under 35 U.S.C. §102(b) as anticipated or under 35 U.S.C. §103(a) as obvious in view of International Appl. No. WO99/06040 to Berry et al.

In particular, the Office alleges that Berry et al teach alpha-lipoic acid or derivatives thereof that are being administered "orally or parenterally" for treating cancer metastasis.

The Office alleges that claims 1-4 read on the disclosure of Berry et al.

Berry et al discloses the use of alpha lipoic acid in combination with tocotrienol for treating a wide variety of diseases including cancer metastasis.

However, Berry et al do not disclose treating metastasis by using as the essential active ingredient lipoic acid or derivatives thereof. Applicants have amended the claims to specify lipoic acid as such an ingredient.

As far as the Office's allegation of obviousness is concerned, Applicants respectfully submit that the Office has not established a prima facie case. Applicants further note that there is no motivation to modify Berry to arrive at the currently claimed

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invention nor any expectation of success. There is no motivation to delete tocotrienol from the composition of Berry.

Rejections under 35 U.S.C. 112, second paragraph

On page 3, the Office rejects claims 1-4 under 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Office rejects the "use claim" format of these claims.

Applicants have amended claims to remove the use claim format to bring the claims in conformance with U.S. standards. This and other small changes as to form that were introduced were not intended and should not be construed to limit the scope of the claims presented herewith.

In view of the above remarks, Applicants respectfully submits that each of claims 1-17 are in condition for allowance. Applicants therefore requests that each of claims 1-17 be found allowable, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

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In the event that this paper is not timely filled, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

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